



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
April 23<sup>rd</sup>, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kate Harrison and Cheryl Davila  
Subject: Budget Referral: Good Government Ombudsman

RECOMMENDATION

Refer to the 2019/2020 budget process to establish a Good Government Ombudsman to facilitate enforcement of Berkeley's good government laws through the City Clerk and City Attorney's Office.

BACKGROUND

Representative democracy requires transparency and accountability. In the post-Citizens United<sup>1</sup> landscape, big money<sup>2</sup> and lobbyists<sup>3</sup> can have an outsized effect on government undertakings. The people of Berkeley have enacted a series of reforms to support these values, beginning with the Berkeley Election Reform Act of 1974, a ballot measure that passed overwhelmingly and limited the amount of campaign contributions, among other reforms.

To promote the highest possible standard of ethical accountability, integrity, and independence among City employees and elected officials, Berkeley has a suite of "good governance" laws -- the Berkeley Election Reform Act (1974), the Open Government Ordinance (2010), the Revolving Door Ordinance (2016), the Fair Elections Act of 2016 (Public Financing), and the Lobbyist Ordinance (2018).

A City Manager memo dated November 20, 2018 (attached) indicated that City administration is currently staffed to adequately enforce the Berkeley Election Reform Act, the Open Government Ordinance, and the Revolving Door Ordinance, but the mandates created by Public Financing Act have drawn employees away from other duties and implementation of the Lobbyist Ordinance is not fully feasible with current staffing levels.

The Fair Elections Act of 2016 established a public financing program to reduce the influence of private campaign contributions and ensure that personal wealth is not a

<sup>1</sup> <https://www.law.cornell.edu/supct/html/08-205.ZS.html>

<sup>2</sup> <https://citizenstakeaction.org/the-problem/>

<sup>3</sup> <https://www.theatlantic.com/business/archive/2015/04/how-corporate-lobbyists-conquered-american-democracy/390822/>

barrier to becoming an elected official. In two election cycles, the Fair Elections Act has already proven effective at achieving these goals, but the filing demands on the City Clerk's Office are burdensome and require more staff. Thus far, the Fair Elections Act has been enforced with existing staff because it is applicable only during election years, but the City Clerk's Office has had to shift employees from other functions to fulfill those duties.

The Berkeley City Council passed the Lobbyist Ordinance on October 2, 2018 with the intention of the City registering all lobbyists, providing ethics training, and maintaining quarterly reports. Thus far enforcement has been infeasible because of lack of staff.

An additional 1.0 FTE, designated as a Deputy City Attorney II, would allow full enforcement of the suite of good government laws including the Lobbyist Ordinance. Berkeley should invest in the principles of accountability by allocating funding for the 1.0 FTE the City Attorney office requires to enforce the laws Berkeley has already passed.

#### FISCAL IMPACTS OF RECOMMENDATION

According to the City Manager memo, approximately \$240,000 annually.

#### ENVIRONMENTAL SUSTAINABILITY

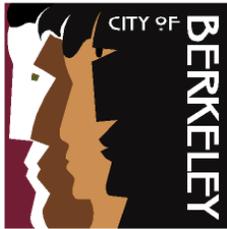
Consistent with Berkeley's climate and sustainability goals.

#### CONTACT PERSON

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#### ATTACHMENTS

1: Fiscal and Administrative Impacts of the Lobbyist Ordinance



Office of the City Manager

November 20, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Subject: Fiscal and Administrative Impacts of the Lobbyist Ordinance

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On October 16, 2018 the City Council adopted the second reading of Ordinance No. 7,629-N.S. the Lobbyist Registration and Regulation Ordinance. This new set of regulations will be effective on January 1, 2020.

At the first reading of the ordinance on October 2, 2018, the City Council requested that the City Manager provide an analysis of the costs and staff demands for implementation of the Lobbyist Ordinance. This specific analysis is provided below. When analyzing the impact of the Lobbyist Ordinance, it is important to consider the impact of administering the full package of Berkeley's "good government" laws – the Berkeley Election Reform Act (1974), the Open Government Ordinance (2010), the Revolving Door Ordinance (2016), the Fair Elections Act of 2016 (Public Financing), and the Lobbyist Ordinance (2018).

Current staffing levels have been adequate to administer the existing mandates in the Berkeley Election Reform Act (BERA), the Open Government Ordinance (OGO), and the Revolving Door Ordinance. The addition of Public Financing in 2016 and the Lobbyist Ordinance in 2018 create two new significant mandates that are not accounted for in current staffing levels. In addition, neither mandate was adopted with a new revenue source and are funded from existing General Fund revenues.

As you will see below, the implementation of the Lobbyist Ordinance is a significant undertaking. To successfully implement and administer the Lobbyist Ordinance while continuing to administer and enforce existing "good government" laws staff estimates that 1.0 new FTE in the Deputy City Attorney II classification is required. The addition of a full FTE in the City Attorney's Office will allow for administrative and enforcement tasks to be properly re-distributed between the City Clerk Department and City Attorney's Office so that each department can have the bandwidth to absorb the new mandates. The fully loaded (salary plus benefits) cost of the new FTE is approximately

**\$239,804.** In addition to the staff cost, a new software module for lobbyist filings is estimated to cost approximately **\$20,000 per year.**

### **Lobbyist Registration Ordinance**

In evaluating the estimates for the costs to implement the Lobbyist Ordinance, staff based the estimates on implementation of a similar projects, the Public Financing Ordinance. However, it is likely that the administrative and enforcement demands for the Lobbyist Ordinance will exceed that of Public Financing. The Public Financing Ordinance is more intermittent in its demands on staff with most of the work falling around specific deadlines in an election year. The Lobbyist Ordinance will have more regular ongoing demands as lobbyists are registering and paying the fee throughout the year, completing their training on a rolling basis, and filing quarterly statements in every year. There will also likely be a more constant flow of complaints compared to BERA complaints that generally only arise during election season.

In addition, the estimates are difficult as staff does not know how many lobbyists will register and how many enforcement actions will there be year over year.

#### Components of Implementation (Dec. 2018 – Dec. 2019)

- Enhancement of NetFile System for Lobbyist Filing and Tracking
- Design of Required Forms
- Education for City Staff
- Education for Open Government Commission (OGC) Members
- Developing OGC Procedures for Administration, Investigation, and Enforcement
- Development of Required Trainings for Registered Lobbyists
- Development of Supplemental Regulations
- Development of Filing Procedures for Lobbyists
- Development of Staff Procedures
- Public Outreach and Education

#### Implementation Staff Demands (Dec. 2018 – Dec. 2019)

Estimated Staff Time (Current Staff) for Implementation:

15% Deputy Attorney  
 10% Senior Legal Secretary  
 50% Assistant Management Analyst  
 25% Assistant City Clerk

### Software Costs

A purely paper-based filing system for lobbyist registration and reporting would not result in any additional software costs. However, the information contained in the filings would not be searchable or downloadable by the public and would be less transparent and user-friendly to review. Paper-based systems are more labor-intensive and will add to the staff time demands and costs because the filings must be mailed or hand-delivered to the city, then staff must scan the filings, manually redact addresses, e-mails, and phone numbers, then manually upload them into the tracking system.

For an electronic filing system, the cost can vary significantly based on the complexity and features of the system. NetFile, our current e-filing vendor for campaign, public financing, and Form 700 filings, has experience with lobbyist registration systems in other cities. They estimate that a basic e-filing system for lobbyist forms would cost at least **\$20,000 per year** and could increase depending on the built-in features. Of course, the benefit of electronic filing systems are that the information is available to public more quickly, the information is searchable and downloadable, it is easier for the filers to file, and requires less staff time to process.

### Ongoing Lobbyist Ordinance Requirements

- Filer Education, Training, Questions and Advice
- Initial and Annual Registration Tracking
- Registration Form Review
- Fee Collection and Accounting
- Quarterly Filing Noticing and Tracking
- Quarterly Non-Filing Enforcement
- Mandated 5% Audit of Filings
- Training Noticing and Tracking
- Training Certification Enforcement
- OGC Complaint Summary Reports
- OGC Enforcement Investigations
- OGC Enforcement Action Stipulation Negotiations

### Ongoing Lobbyist Ordinance Staff Demands

15% Deputy City Attorney  
10% Senior Legal Secretary  
15% Investigator  
20% Assistant Management Analyst  
10% Assistant City Clerk

### Oakland's Experience

Oakland's Public Ethics Commission ("PEC") is tasked with enforcing the Oakland Lobbyist Registration Ordinance. By way of background, the PEC has six (6) staff members including the Executive Director, Deputy Director/Prosecutor, two Ethics Analysts, an Investigator and an Administrative Assistant II. Oakland advised us that they have an administrative person who spends about a quarter of her time as the filing officer for lobbyist registrations and reports. Their investigators spend about 15% of their time investigating allegations relating to the Ordinance and the Prosecutor spends about the same amount on prosecution, although they believe more staffing is needed. In addition, they receive legal support from the City Attorney's Office.

### **Administration of All Berkeley Good Government Laws**

As mentioned above, Berkeley currently has a complete suite of "Good Government Laws" including the Berkeley Election Reform Act (1974), the Open Government Ordinance (2010), the Revolving Door Ordinance (2016), the Fair Elections Act of 2016 (Public Financing), and the Lobbyist Ordinance (2018). All of these laws are jointly administered and enforced by the City Attorney's Office and the City Clerk Department. The Lobbyist Ordinance is the third good government law added to the municipal code in the past two years without any new dedicated funding or increased staffing. All additional administration and enforcement has been completed with existing FTEs and all funds have come from existing General Fund sources.

In addition to this set of laws, the City Council has approved moving forward with the development of a **policy committee** structure for the City Council. This new committee structure will have significant benefits for the development and consideration of legislation, but will also significantly add to the staff demands in the City Clerk Department and the City Attorney's Office.

The estimated ongoing staff demands for current laws (BERA, Revolving Door, OGO, Public Financing):

- 35% of Deputy Attorney
- 15% of Senior Legal Secretary
- 65% Assistant Management Analyst
- 50% Assistant City Clerk

The estimated ongoing staff demands for the Lobbyist Ordinance:

- 15% Deputy City Attorney
- 10% Senior Legal Secretary
- 15% Investigator
- 20% AMA
- 10% ACC

The estimated ongoing staff demands for current laws + the Lobbyist Ordinance:

- 50% of Deputy Attorney
- 30% of Senior Legal Secretary
- 15% Investigator
- 85% AMA
- 60% Assistant City Clerk

The total, cumulative staff demands of this group of laws is estimated to be 2.40 FTEs.

Approximately 1.0 FTE are adequate staffing for BERA, OGO, and Revolving Door administration. The remaining 1.4 FTE for the Lobbyist Ordinance and Public Financing are a deficit to current staffing levels. The addition of the 1.0 FTE in the City Attorney's Office mentioned at the top of this memo should provide adequate staffing for the implementation phase of the Lobbyist Ordinance. Depending on the number of lobbyists that register with the City and the number of enforcement actions initiated, additional staffing may be required.

